

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 958 OF 2004

Sardar Bapu Mahadik. ... Appellant.

Versus.

Sou.Sangeeta Sardar Mahadik. ... Respondent.

Shri S.M.Kamble for the Appellant.

Shri D.S.Sawant for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 27th April, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. The Second Appeal is filed by the husband who has filed a petition for divorce which is dismissed by the trial Court and the Appellate Court has confirmed the dismissal of the petition. The case of the Appellant is that the Respondent-wife was suffering from schizophrenia which is a mental disorder of such a kind that he cannot be reasonably expected to live with her. The Courts have declined to grant decree of divorce on the said ground.

2. Shri Kamble appearing for the Appellant has taken me through the evidence recorded by the trial Court. He invited my attention to the finding that on the date of marriage the Respondent was suffering from mental ill-health. He also invited my attention to the finding recorded by the Appellate Court on the basis of the evidence of Dr.Patil and Dr.Harshe. Dr.Patil had opined that the disease was incurable. He pointed out that the

Appellate Court accepted the evidence of the said two Medical Practitioners and held that the Respondent was suffering from mental disorder atleast from 1995. He submitted that in view of this finding a decree of divorce ought to have been passed as the Appellant cannot be reasonably expected to live with the Respondent.

3. I have considered the submissions. The Appellate court extensively considered the evidence of the Medical Practitioners Dr.Patil, Dr.Harshe and Dr.Nagarkar. The Appellate Court has referred to the evidence of Dr.Nagarkar and the certificate issued by him which is at Exh.87. In the said certificate it is recorded that the Respondent is completely cured. The Appellate Court has accepted the opinion of Dr.Nagarkar that schizophrenia is a psychological condition of a patient at a particular time and it can be cured if medical treatment is properly given. On the basis of the medical certificate issued by Dr.Nagarkar and his evidence, the Appellate Court has accepted the case of the Respondent that when Dr.Nagarkar examined the Respondent on 6th July 2000, he found that she had completely recovered from her psychological disorder.

4. The Appellate Court has also recorded a finding that there was no evidence of the disease being in a aggravated form. The Appellate Court found that there

was no evidence to show that the Respondent had become violent and aggressive. Therefore, the Appellate Court held that there was no evidence on record to show that the extent of mental disorder was such that the Appellant cannot be reasonably expected to live with the Respondent.

5. The findings of the Court below are based on consideration of evidence of the experts, in particular evidence of Dr.Nagarkar who is a qualified psychiatrist. The issue regarding the extent of cruelty is a question of fact. The findings of the Courts below on the said question of fact are based on legal evidence on record.

6. It must be noted here that on the last date I granted time to the Advocates appearing for the parties to find out possibility of an amicable settlement. Both the Advocates have made efforts to bring about an amicable settlement. Unfortunately the said efforts have failed.

7. In view of the findings of fact recorded by the Courts below no interference is called for. The Second Appeal is dismissed with no order as to costs.

Judge.